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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,101	02/04/2004	Jacques Seguin	CVALVE.006CP1	6184
7590 Jeffrey J. Hohenshell 710 Medtronic Parkway Minneapolis, MN 55432				
EXAMINER				
SCHILLINGER, ANN M				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
05/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,101

Applicant(s)

SEGUIN ET AL.

Examiner

ANN SCHILLINGER

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 150-169 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 150-169 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 150, 151, 153-156, 158—61, 163-166, 168, and 169 are rejected under 35 U.S.C. 102(e) as being anticipated by Gabbay (US Pub. No. 2003/0040792). Gabbay discloses the following of claim 150: a prosthetic cardiac valve assembly for implanting into a patient to replace the function of a deficient native cardiac valve, the prosthetic cardiac valve assembly comprising: a replacement valve (98) comprising: a plurality of leaflets (118, 120, 122) through which blood is configured to selectively flow; and a plurality of commissure points (106, 108, 110) from which the replacement valve is suspended; and a valve support (500) connected to the replacement valve (Fig. 17) and configured to be collapsible with the replacement valve for transluminal delivery (para. 0114), said valve support having an axial length sufficient to extend, when implanted, from a position of a native annulus, past the replacement valve, the commissure points and the patient's coronary ostia, and into an ascending aorta; wherein an outer circumferential dimension of the valve support is configured to vary along at least some portions of the axial length (Figs. 16-17); wherein the valve support comprises: a first section (502) terminating in a first end, said first end comprising an outer circumference having a first diameter, said first section configured to engage the native annulus; and a second section (504)

terminating in a second end, said second end comprising an outer circumference having a second diameter, said second section configured to extend past the coronary ostia and into the ascending aorta; wherein the second circumference is greater than the first circumference (Figs. 16-17).

Gabbay discloses the following of claim 151: the prosthetic cardiac valve assembly of Claim 150, wherein said first section comprises a plurality of intersecting members (lower elements 510, 512, 514) forming a plurality of cells, said cells having a first cross-sectional size and arranged substantially uniformly around a periphery of the valve support; wherein the second section comprises a plurality of intersecting members (lower elements 508, 512, 514) forming a plurality of cells, said cells having a second cross-sectional size and arranged substantially uniformly around a periphery of the valve support; and wherein the second cross-sectional size is greater than the first cross-sectional size (Figs. 16-17).

Gabbay discloses claims 153 and 163 in paras. 0084 and 0117.

Gabbay discloses claims 154 and 164 in para. 0089.

Gabbay discloses claims 155, 156, 165 and 166 in para. 0131.

Gabbay discloses claims 158 and 168 in Fig. 6B.

Gabbay discloses claims 159 and 169 in Figs. 16-17.

Gabbay discloses claim 160 as follows: a prosthetic cardiac valve assembly configured to replace the function of a deficient native cardiac valve, the prosthetic cardiac valve assembly comprising: a replacement valve (98) comprising a plurality of leaflets (118, 120, 122) and a plurality of commissure points (106, 108, 110) from which the replacement valve is generally suspended; and a valve support (500) having a proximal portion (502) and a distal portion (504), said valve support connected to the replacement valve and configured to be collapsible for

transluminal delivery; wherein the valve support is configured to extend, when implanted into a patient, from a native annulus at the proximal portion to an ascending aorta at the distal portion, past a location of the patient's coronary ostia; wherein an outer shape of the valve support is configured to vary along an axial length of said valve support such that a cross-sectional dimension of the distal portion is generally larger than a cross-sectional dimension of the proximal portion; wherein the valve support comprises a plurality of intersecting members (508, 510, 512, 514) forming a plurality of cells, said cells being arranged substantially uniformly around a periphery of the valve support; and wherein the plurality of cells located along the distal portion of the valve support comprise a larger cross-sectional size than the plurality of cells located along the proximal portion of the valve support (Figs. 16-17).

Gabbay discloses the limitations of claim 161 as follows: prosthetic cardiac valve assembly of Claim 160, wherein the valve support comprises a proximal end (502's end) and a distal end (504's end), a cross-sectional dimension of said distal end being larger than a cross-sectional dimension of said proximal end (Figs. 16-17).

Please note that many of the claims contain functional and intended use language. In order to be given patentable weight, a functional recitation must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 152 and 162 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbay. Gabbay discloses the claimed invention except for the cells making up the valve support structure comprising a diamond shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cells a diamond shape, since it would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Claims 157 and 167 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabbay in view of Leonhardt et al. (US Pat. No. 5,957,949). Gabbay teaches the invention substantially as claimed, however, Gabbay does not teach using sutures to secure the valve to the valve support. Leonhardt et al. teaches a heart replacement valve that uses sutures to connect a replacement valve (22) to the support structure (26) in col.6, lines 23-34 for the purpose of securely attaching the valve to the support. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Gabbay by using sutures to connect the valve and the support structure in order to securely attach these parts of the prosthesis together.

Response to Arguments

Applicant's arguments with respect to claims 150-169 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./
Examiner, Art Unit 3774

/DAVID ISABELLA/
Supervisory Patent Examiner, Art Unit 3774